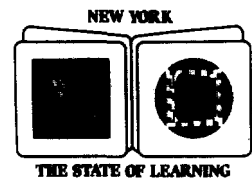


DOCKET FILE COPY ORIGINAL



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12234

EXECUTIVE DEPUTY COMMISSIONER OF EDUCATION  
THE NEW YORK STATE EDUCATION DEPARTMENT  
ALBANY, NEW YORK 12234

December 19, 1996

RECEIVED  
DEC 19 1996  
FCC MAIL ROOM

Office of the Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

Dear Colleague:

Attached are comments from the New York State Education Department in response to the recommended decision regarding Universal Service, CC Docket No. 96-45.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas E. Sheldon'.

Thomas E. Sheldon

Attachment

No. of Copies rec'd  
List ABCDE

044

Comments of New York State Education Department  
Universal Service  
CC Docket 96-45  
December 19, 1996

RECEIVED  
DEC 19 1996  
FCC MAIL ROOM

## GENERAL COMMENTS

- While we support the intent of the Telecommunications Act of 1996 and the Joint Board recommendations, we have a very serious concern with the aggregation of both intra- and inter- state funds at the federal level. Based on the recommendations regarding the allocation of funds to high cost areas, we think that New York State would receive a disproportionately small share of the Universal Service Funds (USF). This was one of the most important issues raised by representatives from schools and libraries in regional roundtable discussions on the Joint Board (JB) recommendations. Further, this recommendation supports the position expressed by the New York State Public Service Commission for more flexibility in the use of intra-state funds. *States should be given the responsibility for managing the allocation of funds derived from intra-state contributions.*
- We also question the practicality of having a fund administrator at the federal level collect and distribute all funds. In addition to reducing state flexibility, this administrative process has the potential of creating counterproductive competition among states that will ultimately hinder the efficient deployment of technology into schools and libraries. Likewise, the procedures that will be required for collecting data in all states, evaluating every proposal, and allocating funds to each project will create a bureaucracy that is unmanageable and unnecessary. *The roles of the Fund Administrator should be limited to establishing, monitoring, and enforcing program goals. The Fund Administrator should also be someone who understands how schools and libraries use telecommunications and related technologies to improve learning and information access.*
- We concur with the JB recommendations that schools and libraries should have "maximum flexibility" to identify telecommunications services needs. We want to ensure, however, that the proposed mechanism of having each school directly submit proposals to the USF does not preempt or disrupt state and regional authority in establishing and coordinating their own priorities and policies. In this regard, we argue that it is essential that as part of this "flexibility" state education agencies be able to work with their local education institutions and their state public utility commissions to ensure that education and technology policies are consistent and mutually self-reinforcing. Similarly, states should be able to engage all statewide and community based organizations to assist schools and libraries with the identification of their telecommunications needs and with the development of their applications for the discount program. Finally, it is only through state-level planning, policy coordination and program development that effective market aggregation and infrastructure development strategies can be instituted, thereby providing beneficial economies of scale for all

**New York State Education Department Comments -- December 19, 1996**

institutions. *State education agencies should be responsible for collecting data, defining services, and developing a statewide implementation plan that would integrate the goals of this program into their own programs for using technology to support and improve learning and teaching.*

- One of the many admirable goals of the Telecommunications Act is to enhance access to “advanced telecommunications and information services to elementary and secondary school classrooms and libraries to the extent technically feasible and economically reasonable.” We have concerns, however, that there are no adequate provisions to require telecommunications providers to offer those services in areas where they do not already exist. In effect, it would be theoretically possible for a provider to satisfy the intent of the law by simply providing a discount on its maximum service. *The final FCC ruling on this program should have more clarity and a greater emphasis on “advanced services.” Further, additional incentives should be available to the provider to encourage the deployment of these services.*
- We have consistently argued that postsecondary and select cultural institutions should also be eligible for discounts. While schools and libraries will be granted discounts because of services they provide and who they serve, postsecondary and cultural institutions should also receive discounts for the same reasons. In terms of New York State, telecommunications and education policies of the Board of Regents are based on the development of a seamless “electronic learning community” where all education and research institutions -- including colleges, universities, and museums -- are responsible for improving learning and increasing access to information. In this regard, the discount limitation ignores the valuable contributions these important institutions can offer to the learning process and will create barriers to access of vital educational resources by schools and libraries. *Although the Telecommunications Act does not provide for discounts for postsecondary and cultural institutions, the discount program should not hinder their ability to collaborate with schools and libraries. Likewise, the discount program should take into account the positive aspects of all regional and community network development.*
- The discount methodologies recommended by the Joint Board are generally supportable, provided that all schools and libraries eligible for funding have an opportunity to participate, regardless of economic wealth factors. We are concerned, however, that some schools and libraries in any given year could be precluded from receiving discounts because the current condition of “first come-first served” will most likely deplete the fund. As such, these institutions may never have the opportunity to participate due to the ongoing nature of the discount supports prescribed by these recommendations. *Some accommodation should be made in each subsequent year’s allocations to ensure that priority is given to institutions that did not receive discounts in previous years.*

**New York State Education Department Comments -- December 19, 1996**

- We agree with the intent of the Act that telecommunications services and premise infrastructure are both necessary to ensure a vital telecommunications link for learning and information access. We also think it is necessary to establish priorities in this regard because of the limited amount of resources in the USF. *We think the interests of universal service can best be fulfilled by requiring the USF to support actual telecommunications costs first. If additional resources remain after the allocation to telecommunications costs, they could then be applied to internal infrastructure costs.*
- We have some concern about the impact the discount program could have on the total amount of funds devoted to telecommunications and technology within an institution's budget. That is, we think that it is imperative for all "savings" to remain within the institution's costs categories of "telecommunications," "technologies," or "learning resources." *The JB should require a "maintenance of effort" provision for all institutions receiving a discount so that "savings" can be applied to more "advanced services."*
- The primary purpose of the Telecommunications Act is to increase competition in local, state, and international markets -- i.e. lower rates, provide more services, and improve all service quality. We have totally embraced this goal in our own state policies and in various submissions to the FCC. We fear, however, that a possible implication of the JB recommendations is that a "chill" will be placed on competition as a result of inordinately burdensome universal service requirements. *Payments to USF fund should not hinder the ability of new entrants into the market -- particularly smaller companies -- from competitively participating in this program.*
- There does not appear to be sufficient clarity of responsibility for ensuring that these funds are being used in the public interest. One of the disingenuous aspects of the implementation of the Telecommunications Act is that there has been insufficient acknowledgment of "who pays" for the services within universal service. It has been our opinion from the beginning that it will be the ratepayer -- i.e. the taxpayer -- who will ultimately assume the burden of payment. *Because these funds could therefore be considered to be tax dollars, all institutions that take advantage of discounts should be required to participate in an evaluation process to document improvement in learning outcomes and access to information resources.*

**New York State Education Department Comments -- December 19, 1996**

**COMMENTS IN RESPONSE TO NOVEMBER 18 FCC RELEASE RE: CC DOCKET  
96-45**

- *What methods should the Commission use for identifying high cost areas for purposes of providing a greater discount to schools and libraries located in high cost areas?*

We support the JB recommendation for the establishment of a national average for unseparated loop costs of incumbent LECs as a benchmark for determining high cost areas. In addition, we recommend that consideration be given to the development of a mechanism to measure the relative absence of, or inability to obtain, advanced telecommunications services in a particular region. While this measure would be highly correlated to affordability, the circumstances surrounding access to advanced telecommunications services are often a function of the lack of economic incentive on the part of providers to provision these services. For example, communities in the rural northern sections and the economically impoverished urban areas of New York State do not have any opportunity to access high capacity transmission services such as T-1 or multi-channel video services because these kinds of services have not been constructed within telephone company central offices. As an example, the installation of a T-1 service in many schools and libraries in some rural areas of the state requires transport of the signal for these services over 200 miles to the nearest equipped central office. Likewise, economically impoverished urban areas typically contain the least well equipped and functioning telephone central offices. As a result, the costs for installing and operating these services are virtually prohibitive to these consumers. We therefore suggest that any region or area for which there is a lack of advanced telecommunications services should be considered a high cost area. If high cost is to be measured in relative terms, bandwidth availability could be used to establish this index, with a sliding scale of cost established on an inverse basis. That is, the complete absence of any advanced telecommunications services would be assigned the highest value of high cost; the areas where all types of advanced services are available would not be assigned any value for high cost.

- *What measures of economic advantage may be readily available to identify economically disadvantaged non-public schools and economically disadvantaged libraries or, if none is readily available, what information could be required that would be minimally burdensome?*

In New York State nonpublic schools are also required to provide information on the number of students who are eligible for free or reduced price lunch, with comparable measures applied to income categories. This particular reporting burden should not be burdensome nor unfamiliar to most nonpublic schools across the country and should therefore serve as the measure for economic disadvantage.

**New York State Education Department Comments – December 19, 1996**

With respect to libraries, we find merit in the comments advanced by the American Library Association regarding economic disadvantage. The new Library Services and Technology Act suggests a poverty factor that may provide an alternative method of determining eligibility for libraries in low income areas. We also agree with its suggestion to include "library consortium" as eligible for support. In New York State, this reference would apply to "library systems." We plan to study these recommendations in more detail and offer further refinements at a later date.

## **New York State Education Department Comments -- December 19, 1996**

### **SPECIFIC COMMENTS**

#### *Functionalities/ Services Eligible for Support*

- We strongly support the Joint Board recommendations related to the functions and kinds of services eligible for support. In addition, we also request that consideration be given to the following two issues:
  - Advanced telecommunications services (those beyond "core" services) should be the major focus for funding support. Consistent with the intent of Congress and the President, the provisioning of services to multiple classrooms within a school building, or multiple points of presence within most libraries, will require the deployment of substantial telecommunications capacities. Multiple connection points and local area network configurations within buildings will quickly aggregate bandwidth requirements, with the end result that most institutions will increase their demand for bandwidth as price decreases. We think the minimum advanced service should be set at T-1 or a comparable bandwidth, with exceptions provided to agencies that cannot afford this service. Ideally, this program should continue to structure discounts that enable schools and libraries to plan for -- and ramp up to -- high speed networks in order to use interactive, multimedia and video applications.
  - Internet access will continue to grow in importance to schools and libraries and the kinds of applications for Internet use will also grow in sophistication. Some consideration should be given to requiring telecommunications providers to ensure minimum levels of Internet access to all users, regardless of the level of connectivity initially requested. That is, telecommunications providers should be required to have the capability to provide, at a minimum, interaction with World Wide Web resources within reasonable response times so that these services are usable within the classroom or the library for real-time instructional and research applications.

#### *Intra-school and Intra-library Connections*

- While the intent of the Joint Board recommendations for supporting discounts for inside wiring is laudable, it may not be practical because costs for this purpose could quickly deplete a capped national fund. Estimates for inside wiring advanced by many of the parties involved in the general proceedings, and the deliberations of the Joint Board on

## **New York State Education Department Comments -- December 19, 1996**

this topic in particular, point to costs that far exceed the total cost of the USF amount that has been recommended (\$2.25 billion). Similarly, the number of wiring configurations that may be used to achieve adequate connectivity within buildings (classrooms in the instance of schools) are myriad and fundamentally related to technological design. Schools and libraries that choose very sophisticated, high cost internal wiring configurations (perhaps because substantial discounts are available) will create an additional disproportionate drain on funds that could be available for other most-in-need institutions. We therefore think that the best policy in this regard is to have ongoing telecommunications costs as the first priority of the discount program. If additional funds remain after the telecommunications costs allocation, then they could be applied to internal infrastructure costs. In general, however, we think the best public policy is to have all costs associated with inside wiring be absorbed as a component of capital budgets and therefore be the ultimate responsibility of the states and localities.

Separate statements issued by two of the FCC Commissioners (Schoenfelder and Chong) in response to Joint Board recommendations on Universal Service support the above position. Two major reasons are cited. First, the inclusion of inside wiring may not be consistent with the intent of Section 254 of the Act. Second, and perhaps more important, the inclusion of inside wiring may have undesirable fiscal impacts on ratepayers (who are also taxpayers) and unintended market consequences (related to competition among inside wiring installers). The findings and reasoning of these Commissioners are consistent with our analysis, so we recommend the elimination of these services from those services eligible for discounts.

### *Discount Methodology*

- In addition to the sliding scale of discounts established to take into account the economic circumstances of schools and libraries, an additional mechanism should be established to deal with the issue of providing services to high cost areas. A specific recommendation related to this need is provided in an earlier section of this filing, in response to the November 18 FCC notice seeking additional comment on these issues of universal service provision for schools and libraries.
- The importance of recognizing the role of state, regional, or city authorities to negotiate discounts rates for constituencies cannot be overstated. Discount programs and specific network configurations that have been defined, in part, by special pricing agreements must be allowed to remain in place, with federal program discounts applied to these rates. Most important, the ability of state, regional, or local entities to bargain effectively with telecommunications providers should not be impeded by the imposition of Universal Service obligations through the Act.



### **New York State Education Department Comments -- December 19, 1996**

- We disagree with the recommendation of the Joint Board to permit the FCC to set discounts for both interstate and intrastate services because of the policy implications for imposition of top down federal authority and the practical issues involved with directing intrastate revenues to a federal fund for distribution. In New York State, there is a distinct possibility that telecommunications providers will be required to make contributions to the Universal Service fund in excess of the amount of resources that would be returned to the state. This could place schools and libraries at a disadvantage in dealing with providers who find themselves in a position of having to recoup part of the cost for contributions to the fund for revenues that are flowing to eligible institutions in other states. As a consequence, the aggregation of all funds at the federal level could have the ultimate net effect of placing a chill on competition within states -- a situation at direct variance with the intent of the Telecommunications Act. It is therefore strongly recommended that individual states be given the option of retaining the intrastate portion of revenues to be contributed to the Universal Service fund and that the responsibility for the distribution of the intra-state portion of the funds to institutions be delegated to the states.

#### *Interstate and Intrastate Discounts*

- This recommendation, while relatively simple and straightforward, may prove to be one of the most difficult. The JB recommendations assert that in order to support congressional intent for an equitable approach to nationwide discounts all funds must be aggregated and managed at the federal level. We think that while equity in distribution is the correct goal, a state-based system may be equal, if not superior, to a federal system. In addition, the management of all aspects of universal service at the federal level reduces opportunities for state, regional, and local education agencies to work together to establish pricing methodologies in conjunction with state public utility commissions that take best advantage of intrastate revenues. As mentioned in the previous section of this filing, some states will experience a negative flow of universal service funding if intrastate revenues are required to be aggregated at the federal level. New York State is among them. States should have an opportunity to benefit proportionately from the intrastate revenues directed to universal service funding. This may be best accomplished by keeping these revenues within the state and delegating the responsibility for the management of these funds to state public utility commissions. The arguments related to the efficiencies that can be introduced by the centralized management of resources are not compelling, and perhaps not realistic. The possible loss of state authority and flexibility, and the possible loss of revenues earned within the state, far outweigh any potential gains derived from a centralized, federal administrative oversight.

## **New York State Education Department Comments -- December 19, 1996**

### *Restrictions Imposed on Schools and Libraries*

- While the statutory requirements of the Telecommunications Act are very clear with respect to eligibility, the exclusion of postsecondary and cultural institutions creates a disincentive for these institutions to participate in telecommunications consortia. Schools and libraries can, and do, benefit from cooperation with postsecondary and cultural institutions and vice versa. In New York State, all educational, research, and cultural institutions operate within a single oversight and chartering provision, known as The University of the State of New York. All postsecondary institutions, museums, and public television stations also enjoy the benefits of this single Regents Charter provision. The extension of discount pricing to only a portion of the institutions served will exclude several hundred educational institutions that have participated in this collaboration. It is understood that this situation cannot be remedied through the enactment of regulation, but there may be an opportunity to moderate its impact by strengthening incentives for the development of telecommunications consortia or for the integration of education institutions into community telecommunications networks. A reasonable incentive in this regard is to allow educational institutions to assume the lead role in network planning and implementation, with associated costs recoverable from the Universal Service Fund.
- With respect to Bona Fide Requests for educational purposes we recommend a far simpler procedure than that described in this section of the recommendations. Every institution applying for discounts pursuant to the provisions of the USF should be required to submit its plan for network infrastructure and application development to their state education agency. This plan would contain all of the required certifications identified within this section of the JB recommendations, but more important, it would also contain and reflect the priorities of the state's long range technology plan to support and improve learning. The result would be one comprehensive and consistent planning approach to telecommunications and technology deployment that would have learning and teaching as the focus. To require a separate set of certifications for these new components of service would create a substantial reporting burden on schools and libraries and it could serve to separate this kind of accountability from those requirements already imposed by state education agencies.

### *Funding Mechanisms for Schools and Libraries*

- We support the JB recommendation regarding the distribution of support for schools and libraries from the same source of revenues used to support other universal service purposes under section 254.

## **New York State Education Department Comments -- December 19, 1996**

### *Access to Advance Telecommunications and Information Services*

- New York State remains committed to ensuring access to advanced telecommunications services as a matter of educational and regulatory policy. We disagree with the assertion in the JB recommendations that the provision of a discount program will automatically stimulate demand for more advanced services, i.e. "significantly increase the availability and deployment of telecommunications services for school classrooms and libraries" (discussion within section 629 of the recommendations). Rather, the discounts may only serve to make more affordable the only services that providers choose to make available in a particular area or region. The entire thrust of Congress' intent for ensuring affordable telecommunications services to schools and libraries seems to be predicated on the expansion of bandwidth and technological sophistication to classrooms and libraries, yet there seem to be no safeguards directed to that end other than price reductions. This position is entirely unacceptable and a detailed response to this issue will be developed during the response phase of this proceeding. At a minimum, the FCC should be expediting the development of a collaborative proceeding with consumers and providers to identify competitively neutral strategies for promoting access to and use of advanced telecommunications and services for schools and libraries.

### *Implementation*

- Again, this is an area that will need to be developed more extensively during the response phase of this proceeding. It may be important to take into consideration some recognition and support for current investments in telecommunications and networking infrastructure development in schools and libraries. Given the significant cost savings that could accrue by taking advantage of universal service support, many institutions may choose to delay investments until the full impact of this proceeding is known. This delay could have potentially devastating consequences for near term capacity building, precisely at a time when these services are needed the most.
- A related issue should be the establishment of a provision that can excuse schools and libraries from current contracts if it can be demonstrated that contracts would not permit the institutions to receive lower rates under the discounted programs. Many institutions in New York State negotiated long term contracts before the passage of the Act and they should not be penalized for having done so.